

Appendix E. Other Applicable Law

Administrative Procedures Act

All federal rulemaking is governed under the provisions of the Administrative Procedures Act (APA) (5 U.S.C. Subchapter II), which establishes a “notice and comment” procedure to enable public participation in the rulemaking process. Under the APA, the National Marine Fisheries Service (NMFS) is required to publish notification of proposed rules in the *Federal Register* and to solicit, consider and respond to public comment on those rules before they are finalized. The APA also establishes a 30-day wait period from the time a final rule is published until it takes effect, with some exceptions. Amendment 8 to the Fishery Management Plan for Coral, Coral Reefs, and Live/Hardbottom Habitats of the South Atlantic Region (Coral Amendment 8) complies with the provisions of the APA through the South Atlantic Fishery Management Council’s (South Atlantic Council) extensive use of public meetings, requests for comments, and consideration of comments. The proposed rule associated with this amendment will have a request for public comments, which complies with the APA.

Information Quality Act

The Information Quality Act (Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Public Law 106-443)) which took effect October 1, 2002, directed the Office of Management and Budget (OMB) to issue government-wide guidelines that “provide policy and procedural guidelines to federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information disseminated by federal agencies”. OMB directed each federal agency to issue its own guidelines, establish administrative mechanisms allowing affected persons to seek and obtain correction of information that does not comply with OMB guidelines, and report periodically to OMB on the number and nature of complaints.

The NOAA Section 515 Information Quality Guidelines require a series of actions for each new information product subject to the Information Quality Act (IQA). This document has used the best available information and made a broad presentation thereof. The process of public review of this document provides an opportunity for comment and challenge to this information, as well as for the provision of additional information.

The information contained in this document was developed using best available scientific information. Therefore, this amendment and National Environmental Policy Act (NEPA) analysis are in compliance with the IQA.

Coastal Zone Management Act

Section 307(c)(1) of the federal Coastal Zone Management Act (CZMA) of 1972 requires that all federal activities that directly affect the coastal zone be consistent with approved state coastal zone management programs to the maximum extent practicable. While it is the goal of the South Atlantic Council to have management measures that complement those of the states,

federal and state administrative procedures vary and regulatory changes are unlikely to be fully instituted at the same time. Based on the analysis of the environmental consequences of the proposed action in **Chapter 4**, the South Atlantic Council has concluded this amendment would improve federal management of South Atlantic fisheries and is consistent to the maximum extent practicable with the Coastal Zone Management Plans of Florida, Georgia, South Carolina, and North Carolina. NMFS will coordinate CZMA review with the appropriate state agencies.

Endangered Species Act

The Endangered Species Act (ESA) of 1973 (16 U.S.C. Section 1531 et seq.) requires that federal agencies must ensure actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of threatened or endangered species or the habitat designated as critical to their survival and recovery. The ESA requires NMFS to consult with the appropriate administrative agency (itself for most marine species, and the U.S. Fish and Wildlife Service for all remaining species) when proposing an action that may affect threatened or endangered species or adversely modify critical habitat. Consultations are necessary to determine the potential impacts of the proposed action. They are concluded informally when proposed actions may affect but are “not likely to adversely affect” threatened or endangered species or designated critical habitat. Formal consultations, resulting in a biological opinion, are required when proposed actions may affect and are “likely to adversely affect” threatened or endangered species or adversely modify designated critical habitat.

Coral Amendment 8 proposes provide protection to deepwater coral species by expanding the size of existing coral habitat areas of particular concern where the use of all bottom tending gear would be prohibited. Therefore, actions proposed in this amendment are not expected to have impacts on threatened or endangered species or their habitat designated as critical to their survival and recovery.

Executive Order 12612: Federalism

E.O. 12612 requires agencies to be guided by the fundamental federalism principles when formulating and implementing policies that have federalism implications. The purpose of the Order is to guarantee the division of governmental responsibilities between the Federal government and the States, as intended by the framers of the Constitution. No federalism issues have been identified relative to the actions proposed in this amendment and associated regulations. Therefore, preparation of a Federalism assessment under E.O. 13132 is not necessary.

Executive Order 12866: Regulatory Planning and Review

E.O. 12866, signed in 1993, requires federal agencies to assess the costs and benefits of their proposed regulations, including distributional impacts, and to select alternatives that maximize net benefits to society. To comply with E.O. 12866, NMFS prepares a Regulatory Impact Review (RIR) for all fishery regulatory actions that implement a new FMP or that significantly amend an existing plan. RIRs provide a comprehensive analysis of the costs and benefits to

society associated with proposed regulatory actions, the problems and policy objectives prompting the regulatory proposals, and the major alternatives that could be used to solve the problems. The reviews also serve as the basis for the agency's determinations as to whether proposed regulations are a "significant regulatory action" under the criteria provided in E.O. 12866 and whether proposed regulations will have a significant economic impact on a substantial number of small entities in compliance with the RFA. A regulation is economically significant if it is likely to result in an annual effect on the economy of at least \$100,000,000 or adversely affect in a material way the economy, a sector of the economy, productivity, jobs, the environment, public health or safety, or state, local, or tribal governments or communities .

The RIR is included as Appendix B.

Executive Order 12962: Recreational Fisheries

E.O. 12962 requires federal agencies, in cooperation with States and Tribes, to improve the quantity, function, sustainable productivity, and distribution of U.S. aquatic resources for increased recreational fishing opportunities through a variety of methods including, but not limited to, developing joint partnerships; promoting the restoration of recreational fishing areas that are limited by water quality and habitat degradation; fostering sound aquatic conservation and restoration endeavors; and evaluating the effects of federally-funded, permitted, or authorized actions on aquatic systems and evaluating the effects of federally-funded, permitted, or authorized actions on aquatic systems and recreational fisheries, and documenting those effects. Additionally, the order establishes a seven member National Recreational Fisheries Coordination Council responsible for, among other things, ensuring that social and economic values of healthy aquatic systems that support recreational fisheries are considered by federal agencies in the course of their actions, sharing the latest resource information and management technologies, and reducing duplicative and cost-inefficient programs among federal agencies involved in conserving or managing recreational fisheries. The Council also is responsible for developing, in cooperation with Federal agencies, States, and Tribes, a Recreational Fishery Resource Conservation Plan - to include a five-year agenda. Finally, the Order requires NMFS and the U.S. Fish and Wildlife Service to develop a joint agency policy for administering the ESA.

The alternatives considered in this amendment are consistent with the directives of E.O. 12962.

Executive Order 13089: Coral Reef Protection

E.O. 13089, signed by President William Clinton on June 11, 1998, recognizes the ecological, social, and economic values provided by the Nation's coral reefs and ensures that federal agencies are protecting these ecosystems. More specifically, the Order requires federal agencies to identify actions that may harm U.S. coral reef ecosystems, to utilize their program and authorities to protect and enhance the conditions of such ecosystems, and to ensure that their actions do not degrade the condition of the coral reef ecosystem.

The alternatives considered in this amendment are consistent with the directives of E.O. 13089.

Executive Order 13158: Marine Protected Areas

E. O. 13158 was signed on May 26, 2000, to strengthen the protection of U.S. ocean and coastal resources through the use of Marine Protected Areas (MPAs). The E.O. defined MPAs as “any area of the marine environment that has been reserved by Federal, State, territorial, tribal, or local laws or regulations to provide lasting protection for part or all of the natural and cultural resources therein”. It directs federal agencies to work closely with state, local, and non-governmental partners to create a comprehensive network of MPAs “representing diverse U.S. marine ecosystems, and the Nation’s natural and cultural resources”.

The alternatives considered in this amendment are consistent with the directives of E.O. 13158.

Marine Mammal Protection Act

The Marine Mammal Protection Act (MMPA) established a moratorium, with certain exceptions, on the taking of marine mammals in U.S. waters and by U.S. citizens on the high seas. It also prohibits the importing of marine mammals and marine mammal products into the United States. Under the MMPA, the Secretary of Commerce (authority delegated to NMFS) is responsible for the conservation and management of cetaceans and pinnipeds (other than walruses). The Secretary of the Interior is responsible for walruses, sea otters, polar bears, manatees, and dugongs.

Part of the responsibility that NMFS has under the MMPA involves monitoring populations of marine mammals to make sure that they stay at optimum levels. If a population falls below its optimum level, it is designated as “depleted”. A conservation plan is then developed to guide research and management actions to restore the population to healthy levels.

In 1994, Congress amended the MMPA to govern the taking of marine mammals incidental to commercial fishing operations. This amendment required the preparation of stock assessments for all marine mammal stocks in waters under U.S. jurisdiction; development and implementation of take-reduction plans for stocks that may be reduced or are being maintained below their optimum sustainable population levels due to interactions with commercial fisheries; and studies of pinniped-fishery interactions. The MMPA requires a commercial fishery to be placed in one of three categories, based on the relative frequency of incidental, serious injuries and mortalities of marine mammals. Category I designates fisheries with frequent, serious injuries and mortalities incidental to commercial fishing; Category II designates fisheries with occasional, serious injuries and mortalities; and Category III designates fisheries with a remote likelihood or no known serious injuries or mortalities.

Under the MMPA, to legally fish in a Category I and/or II fishery, a fisherman must take certain steps. For example, owners of vessels or gear engaging in a Category I or II fishery are required

to obtain a marine mammal authorization by registering with the Marine Mammal Authorization Program (50 CFR 229.4). They are also required to accommodate an observer if requested (50 CFR 229.7(c)), and they must comply with any applicable take reduction plans. None of the actions in Coral Amendment 8 would have a negative impact on marine mammals.

Migratory Bird Treaty Act and Executive Order 13186

The Migratory Bird Treaty Act (MBTA) implemented several bilateral treaties for bird conservation between the United States and Great Britain, the United States and Mexico, the United States and Japan, and the United States and the former Union of Soviet Socialist Republics. Under the MBTA, it is unlawful to pursue, hunt, take, capture, kill, possess, trade, or transport any migratory bird, or any part, nest, or egg of a migratory bird, included in treaties between the countries, except as permitted by regulations issued by the Department of the Interior (16 U.S.C. 703-712). Violations of the MBTA carry criminal penalties. Any equipment and means of transportation used in activities in violation of the MBTA may be seized by the United States government and, upon conviction, must be forfeited to the government.

Executive Order 13186 directs each federal agency taking actions that have, or are likely to have, a measurable negative effect on migratory bird populations to develop and implement a memorandum of understanding (MOU) with the U.S. Fish and Wildlife Service (USFWS) to conserve those bird populations. In the instance of unintentional take of migratory birds, NMFS would develop and use principles, standards, and practices that will lessen the amount of unintentional take in cooperation with the USFWS. Additionally, the MOU would ensure that National Environmental Policy Act (NEPA) analyses evaluate the effects of actions and agency plans on migratory birds, with emphasis on species of concern.

An MOU is currently being developed, which will address the incidental take of migratory birds in commercial fisheries under the jurisdiction of NMFS. NMFS must monitor, report, and take steps to reduce the incidental take of seabirds that occurs in fishing operations. The United States has already developed the U.S. National Plan of Action for Reducing Incidental Catch of Seabirds in Longline Fisheries. Under that plan many potential MOU components are already being implemented.

The alternatives considered in this amendment are consistent with the directives of E.O. 13186.

National Environmental Policy Act

This Coral Amendment 8 has been written and organized in a manner that meets NEPA requirements, and thus is a consolidated NEPA document, as described in NOAA Administrative Order (NAO) 216-6, Section 6.03.a.2.

Purpose and Need for Action

The purpose and need for this action are described in **Section 1.4**.

Alternatives

The alternatives for this action are described in **Section 2.0**.

Affected Environment

The affected environment is described in **Section 3.0**.

Impacts of the Alternatives

The impacts of the alternatives on the environment are described in **Section 4.0**.

National Marine Sanctuaries Act

Under the National Marine Sanctuaries Act (NMSA) (also known as Title III of the Marine Protection, Research, and Sanctuaries Act of 1972), as amended, the U.S. Secretary of Commerce is authorized to designate National Marine Sanctuaries to protect distinctive natural and cultural resources whose protection and beneficial use requires comprehensive planning and management. The National Marine Sanctuary Program is administered by the Sanctuaries and Reserves Division of the NOAA. The Act provides authority for comprehensive and coordinated conservation and management of these marine areas. The National Marine Sanctuary Program currently comprises 13 sanctuaries around the country, including sites in American Samoa and Hawaii. These sites include significant coral reef and kelp forest habitats, and breeding and feeding grounds of whales, sea lions, sharks, and sea turtles. The three sanctuaries in the South Atlantic exclusive economic zone are the USS Monitor, Gray's Reef, and Florida Keys National Marine Sanctuaries.

The alternatives considered in this Amendment are not expected to have any adverse impacts on the resources managed by the National Marine Sanctuaries.

Paperwork Reduction Act

The purpose of the Paperwork Reduction Act (PRA) is to minimize the burden on the public. The Act is intended to ensure that the information collected under the proposed action is needed and is collected in an efficient manner (44 U.S.C. 3501 (1)). The authority to manage information collection and record keeping requirements is vested with the Director of the Office of Management and Budget (OMB). This authority encompasses establishment of guidelines and policies, approval of information collection requests, and reduction of paperwork burdens and duplications. PRA requires NMFS to obtain approval from the OMB before requesting most types of fishery information from the public.

None of the actions in this amendment will request information from the public and the actions will not trigger a PRA approval.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980 (5 U.S.C. 601 et seq.) requires federal agencies to assess the impacts of regulatory actions implemented through notice and comment rulemaking procedures on small businesses, small organizations, and small governmental entities, with the goal of minimizing adverse impacts of burdensome regulations and record-keeping requirements on those entities. Under the RFA, NMFS must determine whether a proposed fishery regulation would have a significant economic impact on a substantial number of small entities. If not, a certification to this effect must be prepared and submitted to the Chief Counsel for Advocacy of the Small Business Administration. Alternatively, if a regulation is determined to significantly impact a substantial number of small entities, the Act requires the agency to prepare an initial and final Regulatory Flexibility Analysis to accompany the proposed and final rule, respectively. These analyses, which describe the type and number of small businesses, affected, the nature and size of the impacts, and alternatives that minimize these impacts while accomplishing stated objectives, must be published in the *Federal Register* in full or in summary for public comment and submitted to the chief counsel for advocacy of the Small Business Administration. Changes to the RFA in June 1996 enable small entities to seek court review of an agency's compliance with the Act's provisions.

The Initial Regulatory Flexibility Analysis is included as Appendix C.

Small Business Act

Enacted in 1953, the Small Business Act requires that agencies assist and protect small-business interests to the extent possible to preserve free competitive enterprise. The objectives of the act are to foster business ownership by individuals who are both socially and economically disadvantaged; and to promote the competitive viability of such firms by providing business development assistance including, but not limited to, management and technical assistance, access to capital and other forms of financial assistance, business training, and counseling, and access to sole source and limited competition federal contract opportunities, to help firms achieve competitive viability. Because most businesses associated with fishing are considered small businesses, NMFS, in implementing regulations, must make an assessment of how those regulations will affect small businesses. Economic and social impacts of the actions and alternatives are included in the analysis in Chapter 4.

Public Law 99-659: Vessel Safety

Public Law 99-659 amended the Magnuson-Stevens Fishery Conservation and Management Act to require that a Fishery Management Plan (FMP) or FMP amendment must consider, and may provide for, temporary adjustments (after consultation with the U.S. Coast Guard and persons utilizing the fishery) regarding access to a fishery for vessels that would be otherwise prevented from participating in the fishery because of safety concerns related to weather or to other ocean conditions.